

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| PAGING SYSTEMS, INC. |) | |
| Petition to Deny filed by Warren C. Havens, |) | File No. 0002232564 |
| Intelligent Transportation & Monitoring Wireless |) | |
| LLC, Telesaurus-VPC, LLC, and Telesaurus |) | |
| Holdings GB LLC |) | |
| |) | |
| Applications for Renewal of Licenses for |) | File Nos. 0003514970, 0003514976, |
| Narrowband PCS Stations WPOI469, WPOI470, |) | 0003514977, 0003514978, 0004116275 |
| WPOI471, and WPOI472, and License for |) | |
| Industrial/Business Pool Station WPGK751 |) | |
| |) | |
| AMTS CONSORTIUM, LLC |) | File No. 0002147762 |
| Application to Partially Assign License for Station |) | |
| WQCP810 to Northeast Utilities Service Company |) | |

ORDER ON RECONSIDERATION

Adopted: November 21, 2011

Released: November 29, 2011

By the Commission:

I. INTRODUCTION

1. This *Order on Reconsideration* addresses petitions filed by Warren C. Havens (Havens), Intelligent Transportation & Monitoring Wireless LLC (ITL), Verde Systems LLC (Verde), Environmental LLC (formerly known as AMTS Consortium, LLC (ACL)¹), Telesaurus Holdings GB LLC (THL), and Skybridge Spectrum Foundation (collectively Petitioners) for reconsideration of two Commission decisions and one decision of the Wireless Telecommunications Bureau's Mobility Division (Division). Because the three petitions raise overlapping issues, we will consider them together.

2. We deny the petitions because they are exclusively based on allegations that are not properly at issue in these proceedings. In brief, these allegations charge that the behavior of Paging Systems, Inc. (PSI), with respect to certain Automated Maritime Telecommunications System (AMTS) licenses not at issue here, was so culpable that PSI should be disqualified from holding any FCC licenses whatsoever. Petitioners have repeatedly attempted to draw these allegations (hereinafter referred to as the AMTS Cases),² against PSI into the proceedings here, and we have repeatedly rejected those attempts,

¹ See, e.g., FCC File No. 0003649429.

² The AMTS Cases consist of the following: Paging Systems, Inc., *Order on Reconsideration*, 21 FCC Rcd 5848 (WTB PSCID 2006), *review pending*; Paging Systems, Inc., *Order on Reconsideration*, 22 FCC Rcd 4608 (WTB MD 2007), *review pending*; Northeast Utilities Service Company, *Order*, 24 FCC Rcd 3310 (WTB MD 2009), *recon. pending*. In the AMTS Cases, Petitioners have raised all the allegations that they repeat in the three proceedings at issue here: claims that PSI failed to surrender licenses for AMTS stations that Petitioners argue canceled automatically because PSI did not meet the applicable construction or coverage requirements; that PSI failed to fully disclose all of its AMTS commercial mobile radio service operations on FCC Forms 499-A and 499-Q, and therefore did not make the appropriate payments to the Universal Service Fund; that PSI failed to cooperate with AMTS geographic licensees by providing the operating parameters of PSI's incumbent site-based AMTS

(continued....)

explaining that, consistent with established precedent, we will not consider those allegations outside of the pending cases in which they are being adjudicated unless and until they are resolved against PSI. Petitioners are parties to the AMTS Cases and have had – and continue to have – a full opportunity to be heard on their allegations in those proceedings. If Petitioners prevail on their claims in the AMTS Cases, they will then have the opportunity to make the type of arguments that they have pressed in the proceedings at issue here. As it now stands, however, Petitioners have cost the Commission – and PSI – considerable time and resources by repeatedly raising these arguments outside the AMTS Cases. Accordingly, we strongly caution Petitioners and their related companies not to file additional misdirected pleadings of this nature.

II. BACKGROUND

3. *Auction 59 MO&O*. In the first of the three petitions before us,³ Petitioners seek reconsideration of a Commission-level *Memorandum Opinion and Order*⁴ that denied their application for review of a Division denial of their petition for reconsideration of a grant by the former Public Safety and Critical Infrastructure Division (PSCID)⁵ of a waiver that permitted PSI to file an untimely long-form application after the conclusion of Auction No. 59.⁶ In denying Petitioners' application for review, the Commission concluded that the waiver grant was consistent with precedent and rejected Petitioners' contention that the Division erred in not addressing Petitioners' challenge to PSI's basic character qualifications.⁷ With respect to the character issue, the Commission noted that Petitioners' allegations did not pertain to the licenses at issue in that proceeding and that the licenses to which the allegations did pertain were the subject of other pending proceedings (*i.e.*, the AMTS Cases).⁸ The Commission concluded that Petitioners' allegations were more appropriately addressed in the AMTS Cases, given that

[t]he Commission's policy is that a licensee's misconduct with respect to one station is not necessarily relevant to its qualifications to hold any station license, and "[i]f the Commission has not as an initial matter found that the allegations under consideration

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stations; and that PSI's actions with respect to its AMTS stations demonstrate that PSI has not disclosed the real party in interest regarding those licenses.

³ Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Environmental LLC, Skybridge Spectrum Foundation, and Telesaurus Holdings GB LLC Petition for Reconsideration Based on New Facts, And in the Alternative, Section 1.41 Request (filed Feb. 3, 2010) (Auction 59 PFR). PSI filed an opposition on February 18, 2010.

⁴ Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 450, 453-54 ¶ 8 (2010) (*Auction 59 MO&O*).

⁵ Pursuant to a reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁶ See *Auction 59 MO&O* (denying application for review filed by Havens and affiliated entities); Paging Systems, Inc., *Order on Reconsideration*, 22 FCC Rcd 4602 (WTB MD 2007) (denying petition for reconsideration filed by Havens and affiliated entities); Paging Systems, Inc., *Order*, 21 FCC Rcd 3032 (WTB PSCID 2006) (denying petition to deny, filed by Havens and affiliated entities, against application filed by PSI for Multiple Address System licenses for which PSI was high bidder in Auction No. 59, and denying petition for reconsideration filed by Havens and affiliated entities of PSCID's decision granting PSI a waiver of the Auction No. 59 long-form filing deadline); Audrey P. Rasmussen, Esq., 20 FCC Rcd 16194 (WTB PSCID 2005) (granting PSI a waiver of the Auction No. 59 long-form filing deadline).

⁷ See *Auction 59 MO&O*, 25 FCC Rcd at 453-54 ¶¶ 7-8.

⁸ *Id.* at 454 ¶ 8 (citing Paging Systems, Inc., *Order on Reconsideration*, 21 FCC Rcd 5848 (WTB PSCID 2006), *review pending*; Paging Systems, Inc., *Order on Reconsideration*, 22 FCC Rcd 4608 (WTB MD 2007), *review pending*).

involve conduct likely to impact the future operations of other stations, there generally appears to be no reason to condition or defer” processing of applications regarding other stations.⁹

4. *ACL-NUSCO MO&O*. The second petition before us is another effort by the Petitioners to raise their concerns regarding PSI’s fitness to be a licensee.¹⁰ Here, Petitioners seek reconsideration of a Commission decision that *granted* an assignment application filed by ACL over PSI’s opposition.¹¹ More specifically, this second petition seeks partial reconsideration of the *ACL-NUSCO MO&O*, which affirmed (1) PSCID’s consent to ACL’s application to assign part of a geographic license to Northeast Utilities Services Company (NUSCO), and (2) the grant of a request that certain information submitted with the application be afforded confidential treatment. In denying PSI’s application for review of the Division’s decision denying reconsideration of the underlying action,¹² the Commission concluded that the information was properly afforded confidential treatment¹³ and that the Division did not need to resolve whether PSI had standing to challenge the assignment application, given that the Division had chosen to treat PSI’s petition to deny as an informal request for Commission action and addressed the merits of the pleading.¹⁴ Nevertheless, Petitioners ask that the Commission revisit this decision to address character allegations against PSI that relate to the licenses in the AMTS Cases, not those at issue in the *ACL-NUSCO* proceeding.

5. *Division Order*. In the third petition at issue,¹⁵ Petitioners seek reconsideration of a Division-level *Order on Reconsideration and Order*,¹⁶ in which the Division affirmed its denial of Petitioners’ petition to deny PSI’s applications to renew certain Narrowband PCS licenses.¹⁷ Again, Petitioners’ challenge hinges on the claim that PSI’s actions with respect to licenses at issue in the AMTS Cases demonstrate that PSI lacks the requisite character qualifications to hold any license; Petitioners do not otherwise attack PSI’s tenure as licensee of the Narrowband PCS licenses or its right to renewal. In denying Petitioners’ petition for reconsideration, the Division therefore concluded, based on the *Auction*

⁹ *Id.* at 453-54 ¶¶ 7-8 (quoting Policy Regarding Character Qualifications in Broadcast Licensing, *Report, Order and Policy Statement*, GEN Docket No. 81-500, 102 F.C.C. 2d 1179, 1224-25 ¶ 94 (1986)). The Commission also noted that it retained the right to impose limitations or take appropriate actions against the other stations at a later time, if circumstances warrant. *Id.* at 454 ¶ 8.

¹⁰ Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Environmental LLC, Skybridge Spectrum Foundation, and Telesaurus Holdings GB LLC Petition for Partial Reconsideration in Part Based on New Facts, and in the Alternative, Request Under Section 1.41, and Motion to Accept Under Section 312 of the Communications Act (filed Feb. 8, 2010) (*ACL-NUSCO PFR*). Verde is not a party to this petition. PSI filed an opposition on February 23, 2010.

¹¹ AMTS Consortium, LLC, *Memorandum Opinion and Order*, 25 FCC Rcd 526 (2010) (*ACL-NUSCO MO&O*). As noted above, *see* para. 1, *supra*, Petitioner Environmental LLC was formerly known as ACL.

¹² AMTS Consortium, LLC, *Order on Reconsideration*, 22 FCC Rcd 1597 (WTB MD 2007).

¹³ *See ACL-NUSCO MO&O*, 25 FCC Rcd at 529-31 ¶¶ 10-17.

¹⁴ *Id.* at 528 ¶ 9.

¹⁵ Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Environmental LLC, Skybridge Spectrum Foundation, and Telesaurus Holdings GB LLC Petition for Reconsideration (filed June 25, 2010) (*Division Order PFR*). PSI filed an opposition on July 8, 2010. Petitioners filed a reply on July 20, 2010.

¹⁶ Paging Systems, Inc., *Order on Reconsideration and Order*, 25 FCC Rcd 5762 (WTB MD 2010) (*Division Order*).

¹⁷ Paging Systems, Inc., *Order*, 24 FCC Rcd 5309 (WTB MD 2009). The *Division Order* also denied a petition filed by Petitioners to deny PSI’s application to renew a Part 90 Commercial Industrial/Business Pool station license. Verde was a party to the petition to deny the Part 90 Commercial Industrial/Business Pool application but not to the petition to deny the Narrowband PCS applications.

59 *MO&O*, that Petitioners' character allegations relating to PSI's behavior with respect to its AMTS licenses were more appropriately addressed in the AMTS Cases.¹⁸

III. DISCUSSION

6. Despite the complicated procedural histories summarized above, the issue here is relatively straightforward. All three petitions seek reconsideration of the underlying decisions based on what Petitioners contend are "new facts" that demonstrate that PSI lacks the required character and fitness to be a Commission licensee.¹⁹ Petitioners' proffer of "new facts," however, simply repeats the same allegations they first raised in the AMTS Cases about PSI's conduct as a Commission licensee of the AMTS licenses at issue there.²⁰ These allegations are being considered in the AMTS Cases, where they were first raised. Moreover, in a number of decisions issued in the proceedings here, we have explained that while the agency is still in the process of adjudicating the character allegations in the AMTS Cases, we will not consider those same allegations in proceedings outside of those Cases.²¹ As described more fully below, this approach is fully consistent with our policy for handling such allegations, and we therefore deny Petitioners' petitions for reconsideration.

7. When a licensee holds multiple licenses, character challenges stemming from behavior involving a specific license are most appropriately raised in a proceeding where that license is directly at issue.²² At that time and in that proceeding, the Commission has the opportunity to evaluate the charges and the relevant circumstances to determine whether the totality of the matter warrants placing restrictions on any other licenses that the licensee may hold or seek to acquire (*e.g.*, by deferring decisions on renewal, transfer or initial applications for such other licenses; by imposing conditions on the grant of such applications; etc.). Under long-standing Commission policy, unless the Commission makes an affirmative decision at that time to impose such restrictions generally on the licensee, the Commission will not encumber proceedings involving the licensee's other licenses with consideration of the pending character allegations made in the principal proceeding.²³ When the Commission first articulated this

¹⁸ See *Division Order*, 25 FCC Rcd at 5763 ¶ 4 (citing *Auction 59 MO&O*, 25 FCC Rcd at 453-54 ¶ 8). The underlying Division decision rejected Petitioners' petition to deny PSI's renewal applications on the same basic ground. *Paging Systems, Inc., Order*, 24 FCC Rcd at 5309-10 ¶ 2.

¹⁹ With respect to the *ACL-NUSCO MO&O*, which completely denied PSI the relief it requested (and thereby upheld the grant of ACL's assignment application), Petitioners seek reconsideration only insofar as they argue that the Commission should not have addressed the substance of PSI's pleadings, due to PSI's lack of character qualifications. See *ACL-NUSCO PFR* at 3.

²⁰ See note 2, *supra*.

²¹ Specifically, we have issued one Commission-level and four Division-level decisions against Petitioners on the same basic grounds that Petitioners' allegations did not pertain to the licenses at issue in the subject proceeding and that we are, in fact, considering these same allegations that they have raised in licensing proceedings to which they directly pertain. See *Paging Systems, Inc., Order*, 26 FCC Rcd 6653 (WTB BD 2011); *Paging Systems, Inc., Order*, 26 FCC Rcd 5913 (WTB MD 2011); *Division Order*, 25 FCC Rcd 5762; *Paging Systems, Inc., Order*, 24 FCC Rcd 5309 (WTB MD 2009); *Auction 59 MO&O*, 25 FCC Rcd 454.

²² See *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, GEN Docket No. 81-500, 102 FCC 2d 1179, 1224-25 ¶¶ 92-95 (1986) (*1986 Character Policy Statement*).

²³ See *id.*; see also *Straus Communications, Inc. and Federal Broadcasting Company, Memorandum Opinion and Order*, 2 FCC Rcd 7469, 7470 ¶ 6 (1987) (stating that at the time a misconduct issue is designated with respect to one license, "[a]bsent an express limitation on the transferability of a multiple owner's other licenses, . . . those licenses are freely transferable without condition"); *M&M Broadcasters, Ltd. c/o Anne Goodwin Crump, et al., Letter*, 25 FCC Rcd 4942, 4946 (MB AD 2010); *Richard R. Zaragoza, Esq. et al., Letter*, 24 FCC Rcd 5743, 5747 (MB AD 2009); *Citicasters Licenses, L.P., Memorandum Opinion and Order and Notice of Apparent Liability*, 22 FCC Rcd 19324, 19336 ¶ 34 (MB 2007).

approach in the *1986 Character Policy Statement*, it did so in the context of broadcast licensing, stating that if character allegations against a licensee about its behavior with respect to a particular license are at issue in a proceeding involving that license, the agency would make a determination, at the time it was considering the designation of the proceeding for hearing, whether to place restrictions on other licenses held or sought by the licensee.²⁴ Unless the agency, at that time, designates such other licenses for hearing or otherwise places restrictions on those licenses or the licensee, the allegations will be resolved in the principal proceeding and not be considered in actions involving such other licenses unless (and until) the allegations are resolved against the licensee.²⁵

8. Since adopting the *1986 Character Policy Statement*, the Commission has extended the *Policy Statement*'s principles and approach to other services, including wireless services.²⁶ Thus, while the processes for handling wireless cases are not identical to those for broadcast cases, the treatment of the character allegations in the AMTS Cases – where we did not designate any PSI licenses for hearing, did not place any conditions on other PSI-held licenses or impose any restrictions on future proceedings involving PSI, and, in fact, decided not to act on these character allegations (albeit in decisions that are currently on reconsideration) – precludes consideration of these allegations in proceedings involving PSI's other licenses at this time.

9. This preclusive effect does not impair Petitioners' opportunity for redress; rather, it prevents the potentially unnecessary impairment of a licensee's licensing endeavors and avoids duplicative administrative proceedings. Should the Commission, in the AMTS Cases, ultimately rule against PSI on the Petitioners' character allegations, the question whether the asserted improper behavior is sufficient to call into question PSI's basic character qualifications to hold any FCC license could be raised again against any other license. Thus, the Commission has observed that it retains the right to impose sanctions or take appropriate actions against the licensee at a later time with respect to stations not involved in the initial character proceeding, if circumstances warrant.²⁷ The opportunity to pursue subsequent action with respect to such other stations is in fact critical, as a licensee's behavior with

²⁴ See *1986 Character Policy Statement*, 102 FCC 2d at 1224 ¶ 93 (endorsing the approach of "sett[ing] at the time of designation of the station whose qualifications are primarily at issue" the question whether to place conditions on the renewal and transferability of other commonly-held stations), 1225 ¶ 95 (stating that under the new policy, the Commission "will in the future indicate in the designation orders of . . . stations [facing charges of misconduct] if restrictions on acquisitions are to be imposed").

²⁵ See *id.* at 1224 ¶ 93 (stating that "no restrictions will be placed on the renewals of any stations not designated" and concluding that "[u]nless the licenses are designated, they are freely transferable without condition"), 1224-25 ¶ 94 (stating that "absent Commission action to restrict transfers or assignments of the licensee's other stations, we will in the future ordinarily allow such acquisitions to take place without conditions being imposed"), 1225 ¶ 95 (stating that "[i]n the absence of any action [in a hearing designation order to restrict acquisitions of other licenses by the licensee], no restrictions are to be presumed").

²⁶ See, e.g., Leslie D. Brewer, *Order to Show Cause, Notice of Order of Suspension, Notice of Opportunity for Hearing, and Notice of Apparent Liability for a Forfeiture*, EB Docket No. 01-61, 16 FCC Rcd 5671, 5674 ¶ 12 (2001) (stating that "[t]he Character Policy Statement is applicable to . . . wireless radio licensees"); cf. WorldCom, Inc., and its Subsidiaries (D.I.P.), Transferor, and MCI, Inc., Transferee, *Memorandum Opinion and Order*, WC Docket No. 02-215, 18 FCC Rcd 26484, 26493 ¶ 13 (2003) (observing that "the Commission has used its character policy, initially developed in the broadcast area, as guidance in resolving similar questions in common carrier license transfer proceedings").

²⁷ *Auction 59 MO&O*, 25 FCC Rcd at 454 ¶ 8; see also *1986 Character Policy Statement*, 102 FCC 2d at 1225 ¶ 94 (noting that even if it does not generally restrict the licensing endeavors of a licensee when considering character allegations about that licensee's behavior with respect to a specific license, and thus authorizes other license acquisitions, that authorization "does not affect the Commission's discretion to take action against the newly acquired stations, should the Commission's inquiry ultimately reveal that the [licensee] does not possess the requisite basic qualifications to remain a licensee").

respect to one station in certain circumstances may bear on its overall character and consequent qualifications to hold any FCC license.²⁸ But absent an initial determination that the totality of the circumstances surrounding the character allegations raises a sufficiently strong concern in this regard, we have made the policy decision not to delay the consideration and processing of licenses not directly implicated by the character allegations.²⁹

IV. CONCLUSION

10. For the foregoing reasons, we deny the three petitions for reconsideration before us.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and Warren C. Havens on February 3, 2010 IS DENIED.

12. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, and Warren C. Havens on February 8, 2010 IS DENIED.

13. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and Warren C. Havens on July 8, 2010 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁸ *1986 Character Policy Statement*, 102 FCC 2d at 1224 ¶¶ 92 (“[S]ome behavior may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license.”).

²⁹ *Id.* at 1224-25 ¶¶ 92-95.